IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 540 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

HUSENBHAI JAFARBHAI SOLANKI [DECEASED]

Versus

GSRTC

Appearance:

1. Special Civil Application No. 540 of 2001

MR JT TRIVEDI for Petitioner No. 1

MR BJ TRIVEDI for Petitioner No. 1-1/2

MR HARDIK C RAWAL for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Trivedi for the petitioner and Mr. H.C. Raval for the respondent

corporation. Brief facts of the present petition are to the effect that the petitioner served with the respondent corporation for about more than 33 years. However, he suffered from depleted blood supply to his brain and a certificate was issued by Dr. Prakash Bamroliya of Dhoraji on 6.6.1996. The petitioner who was demoted from the post of driver to R.C. Mechanic had to be leave for a long period. Certificates of the panel doctor of the respondent no.1 were periodically submitted. It was recommended vide certificate dated 23.1.1999 that the petitioner be referred to Civil Surgeon However, it was not done and the petitioner was charge sheeted and ultimately was forced to submit resignation. Thereafter, the petitioner made a request to the authorities to give compassionate employment to one of his two sons so that his family can maintain itself. However, said request has been rejected vide letter dated 26.9.2000 on the ground that the petitioner had not retired but had resigned. Therefore, the petitioner has approached this Court by way of this petition.

The question is that the applications were made by the dependents of the petitioner for appointment on compassionate ground as there is no other family member who is having income and earning some thing. However, such request was rejected on the ground that the concerned workman has not been declared unfit and his services were not terminated but he has resigned from services of the corporation and, therefore, no such benefit is available.

In this petition, affidavit in reply has been filed by the respondent Corporation and, thereafter, petition has been amended by the petitioner.

The question is that the petitioner suffered from depleted blood supply to his brain and a certificate was issued by Dr. Prakash Bamroliya of Dhoraji on 6.6.1996 and the petitioner who was demoted from the post of driver to R.C. Mechanic had to be leave for a long period and thereafter, certificates of the panel doctor of the respondent no.1 were periodically submitted. It was recommended vide certificate dated 23.1.1999 that the petitioner be referred to Civil Surgeon However, it was not done and the petitioner was charge sheeted and ultimately was forced to submit resignation. Thereafter, the petitioner made a request to the authorities to give compassionate employment to one of his two sons so that his family can maintain itself. However, said request has been rejected vide letter dated 26.9.2000 on the ground that the petitioner had not retired but had

resigned. In view of the disease from which the workman concerned was suffering, he was not able to resume the duties but the corporation has not taken any effective steps to send the deceased workman for medical examination and that is how the deceased workman has not been declared unfit though in reality, he was unfit to work on the post in question and, therefore, resignation has been given by the workman which has come in his way for compassionate appointment to his heirs. In such peculiar facts and circumstances of the present case, settlement would come in the way of the petitioner and, therefore, according to my opinion, it would be just and proper to direct the heirs of the deceased workman concerned to make representation to the respondent corporation in light of the fact that their father was suffering from the aforesaid disease as certified by Dr. Prakash Bamrolia on 6.6.1996 and thereafter certificates of the panel doctor of the respondent no.1 were periodically submitted wherein it was recommended vide certificate dated 23.1.1999 that the workman concerned be referred to Civil Surgeon However, it was not done and the and ultimately he was forced to submit resignation and such resignation is coming in their way in getting appointment on compassionate ground though as a matter of fact their deceased father was unable to work on the post of driver.

Therefore, in the peculiar facts and circumstances of the present case, it is directed to the heirs and legal representative of the deceased petitioners to make such representation in the subject matter of this petition before the respondent corporation within one month from the date of receipt of copy of this order. As and when such representative made by them is received by the respondent Corporation, it is directed to the respondent corporation to consider the case of the petitioner for compassionate appointment on the ground that it was not disputed that the workman concerned was suffering from the serious disease as aforesaid and was unable to work and yet he was not send for medical examination by the Corporation and if he would have been send for medical examination before the Board by the Corporation, then he would have been declared unfit and in reality, he was unfit for the work in question and also consider these aspects with sympathetic approach and to pass appropriate orders in accordance with law within two months from the date of receipt of such representation from the petitioners and to communicate the decision to the petitioner immediately.

With these observations and directions, this

petition is disposed of with a liberty in favour of the petitioners to challenge the orders that may be made by the respondent on the representation that may be made by the petitioner if such orders are adverse to them. Notice is discharged. There shall be no order as to costs.

8.4.2002. (H.K. Rathod,J.)

Vyas